

**FEDERAL CIRCUIT SUMMARY FOR WEEK ENDING JULY 19, 2019****In re Rudy, No. 2018-2106 (July 18, 2019) (nonprecedential); Patent App. No. 10/360,681****Key point(s):**

- To anticipate a claim, a reference must describe each and every element as set forth in the claim.

**Facts/Background:** The claims of the '681 patent application are directed to a “web-mounting fishing plug comprising a body having a slot or aperture into which a web can be inserted.” According to the specification, a web is an insert such as a postage stamp, photograph, drawing, or piece of foil that can “enhance [the plug’s] appeal to the fisherman and perhaps even the fish.” Unlike claims 48, 50, and 51, claim 52 recites “one and only one plug body.” The Examiner rejected claims 48 and 52 as anticipated by U.S. Patent No. 3,423,686 (Le Master), and on appeal, the Patent Trial and Appeal Board (PTAB) affirmed the Examiner’s rejection. The PTAB found that Le Master disclosed a fishing plug and that inventor/owner Christopher John Rudy had not provided evidentiary support that would distinguish a fishing plug from Le Master’s tail portion of a fishing lure. The PTAB also found that Le Master disclosed a “narrow slot” that met all the dimensional limitations set forth in claim 48, which also satisfied the limitation that the plug body be “substantially thicker than the narrow slot.” With respect to claim 52, the PTAB found that Le Master disclosed the limitation that the kit includes “one and only one plug body” because “Le Master may be regarded as being made up of a head body 1 and a plug body 7, and . . . plug body 7 is only a single plug body.” Rudy appealed the PTAB’s decision to the Federal Circuit.

**Holding:** Affirmed in part, vacated and remanded in part. In addition to several arguments rejected by the Federal Circuit, Rudy argued that Le Master cannot anticipate claim 52 because claim 52 expressly limits the kit to include “one and only one plug body,” while Le Master discloses a plug body consisting of two pieces. The Federal Circuit held that the PTAB erred in its adoption of the Examiner’s analysis of this claim limitation. The Federal Circuit determined that the Examiner’s characterization of Le Master as describing a “head body” and a “plug body” was contradicted by Le Master itself, which describes the invention as a “tail portion for the main body of a fishing lure” and describes the “body” as including both the “tail portion” and the segment to which the tail portion is attached. Thus, the Federal Circuit concluded that the PTAB erred by holding claim 52 anticipated by Le Master and remanded to the PTAB to consider whether claim 52’s limitation of “one and only one plug body” requires that the plug body consist of a single component, or whether Le Master’s disclosure of a plug body consisting of two separate components suffices to disclose this limitation.

The Federal Circuit discerned no reversible error in the PTAB’s determinations with respect to claims 48 and 50-51 and affirmed the PTAB’s decision rejecting these claims.

**CCS Technology, Inc. v. Panduit Corp., Nos. 2018-1733 and 2018-1734 (July 19, 2019) (nonprecedential); Patent Nos. 6,869,227 and 6,758,600**

**Key point(s):**

- If a claim does not explicitly recite a limitation and the patent specification describes other embodiments without the limitation, the claim is not likely to be construed as including this limitation.
- The use of “includes” in a patent specification when explaining an element is best understood as an illustrative example, rather than a definition.
- The same limitation in different claims of the same patent or related patents should carry the same construed meaning, and this principle is only overcome if it is clear that the same limitation has different meanings in different claims.

**Facts/Background:** CCS owns the related '227 and '600 patents, which are directed to systems for managing bidirectional fiber optic communications. Panduit petitioned for two *inter partes* reviews, which the Patent Trial and Appeal Board (PTAB) instituted. The PTAB construed the term “optical ribbon” in the challenged claims of the '227 patent and the term “optical fiber ribbon” in the challenged claims of the '600 patent to “encompass[] fibers that are bonded together in a generally planar array or optical fibers that are grouped and aligned in a generally planar array.” As so construed, the PTAB found claims 1-3 and 8-10 of the '227 patent and claims 1 and 2 of the '600 patent anticipated by Japanese Patent No. H11-160542 (Toyooka) and claims 1 and 2 of the '600 patent obvious in view of Toyooka and U.S. Patent No. 6,604,866 (Kang). CCS appealed.

**Holding:** Affirmed. At issue on appeal was the proper construction of the two terms. CCS argued that the PTAB erred in concluding that the optical ribbon limitations encompass individual fibers that are not necessarily bound together (*i.e.*, the optical ribbon limitations are not so broad that they encompass fibers that are merely “grouped and aligned in a generally planar array”). Specifically, CCS argued that the optical ribbon limitations should be construed to mean “a group of optical fibers that are coated with a ribbon common layer” based on a statement in the specifications of the '227 and '600 patents.

The Federal Circuit declined to read “ribbon common layer” into the optical ribbon limitations because the claims did not recite a ribbon common layer and because other parts of the specifications indicated that the fibers of an optical ribbon need not be bound together by a ribbon common layer. After also analyzing other arguments from CCS involving key advantages of the invention stemming from the use of the ribbon common layer and dictionary definitions that did not overcome the intrinsic evidence in the patent specifications, the Federal Circuit determined that the PTAB correctly construed the optical ribbon limitations and concluded that the PTAB’s findings that the claim limitations with the optical ribbon terms were disclosed in Toyooka were supported by substantial evidence. Thus, the Federal Circuit affirmed the PTAB’s decision as to the unpatentability of the claims at issue.